

Delta Counties Coalition (DCC) - 2016 Legislative Priorities

1. Bay Delta Conservation Plan (BDCP) Rebranded April 2015 as California Water Fix (CA Water Fix); Long-standing Concerns Remain.

- ❑ **Despite the project's \$15 billion price tag (projected to balloon well above this number) and its complexity, the BDCP/CA WaterFix continues to narrowly focus on isolated conveyance and will likely increase water exports south of the Delta through two massive 40-foot diameter tunnels.** No matter what version of the BDCP/CA Water Fix is proposed, the numbers don't pencil out from a scientific, economic, or environmental standpoint. The tunnels will cost billions, requiring massive taxpayer and ratepayer funds to pay for what is clearly a financial failure that will not produce a single drop of new water and stand to cause significant and irreparable harm to the Delta.
- ❑ **The BDCP/CA WaterFix fails to contribute to the co-equal goals** established by the 2009 Delta Reform Act that requires increasing water supply reliability for California and restoration of the Delta ecosystem. Governor Brown's twin tunnel project is no longer a Habitat Conservation Plan. The rebranded plan strips away the vast majority of the conservation measures previously aimed at "improving water operations, protecting water supplies and water quality, and restoring the Delta ecosystem within a stable regulatory framework," and only retains the water conveyance system component. The latest draft BDPC/CA WaterFix Biological Assessment acknowledges the project would likely adversely affect Chinook salmon, steelhead, and Delta smelt and other key fish species.
- ❑ **State and federal agencies and scientists raise concerns.** In addition to concerns raised by the Environmental Protection Agency that the tunnel plan may violate the Clean Water Act, a recent Delta Independent Science Board analysis of the BDCP/CA Water Fix states that: "the current draft falls short of providing decision-makers, managers, scientists, and the broader public with the information needed to make an informed evaluation." In addition, the BDCP/CA Water Fix "lacks key information, analyses, summaries, and comparisons. The missing content is needed for evaluation of the science that underpins the proposed project. Accordingly, the current draft fails to adequately inform weighty decisions about public policy."
- ❑ **The BDCP/CA Water Fix still excludes Delta stakeholders.** The Sacramento-San Joaquin Delta will be ground zero for a host of adverse and significant unmitigable impacts from the BDCP/CA Water Fix; therefore, in the name of good public policy, our interests must be represented (and ultimately implemented) throughout the process in order to protect the region's unique and significant resources in perpetuity. Delta stakeholders must have a role in governance of any project, real-time operations, and adaptive management decisions. (Cooperating agency process offers some minor, infrequent interaction with agencies.)

- **There is no approved project and Metropolitan Water District (MWD) is taking steps to purchase four Delta islands costing upwards of \$240 million.** MWD announced March 8, 2016 that it would purchase four delta islands, and a portion of another, covering approximately 20,000 acres in the heart of the Delta. The islands were originally acquired by the Zurich Insurance Group (Delta Wetlands Properties) for water storage on the islands and habitat. Ratepayers for MWD could be on the hook to pay upwards of \$240 million when the deal is finalized in late April. Only 54% of MWD's 26-member agencies approved the purchase with three members and beneficiaries of water exports opposing including, Los Angeles, San Diego and Santa Monica. With two of the islands in the bulls eye of the Governor's tunnel plan, MWD has reportedly acknowledged its agency doesn't desire to use two islands as reservoirs, but rather a staging ground for equipment, excavated dirt and other materials. This is another action by exporters to expedite an incomplete and fatally flawed project

DCC Federal Request: *The DCC agrees that the status quo in the Delta is unacceptable and has worked tirelessly to develop more viable proposals for addressing these urgent ecosystem, water quality, and water supply issues. The congressional delegation and federal agencies are urged to encourage the Governor and the Natural Resources Agency to: (1) Abandon the BDCP/CA Water Fix and evaluate a comprehensive range of alternatives to achieve plan objectives more cost-effectively and with less impact than isolated Delta conveyance improvements; and (2) Expeditiously devote the resources necessary to work with the DCC to develop and implement a consensus-based process that includes substantive and meaningful input from stakeholders, including the DCC.*

2. Statewide Water Management Solutions

- **We all agree that the state needs a comprehensive plan to address California's water needs.** The current version of the BDCP/CA WaterFix is not a comprehensive plan because it benefits one region at the expense of another. The State released its California Water Action Plan in January 2014 that includes a portfolio of thoughtful actions to address California's ecosystem and water challenges. We need to work together to develop a balanced and sustainable Delta solution that benefits all of California.

California's water challenges can only be addressed with a comprehensive water solution that incorporates the following:

- Immediate and long-term water delivery system improvements, including, but not limited to, through-Delta conveyance and implementation of measures to reduce the loss of protected aquatic species (e.g., fish screens).
- The broad range of surface and groundwater storage options (including local storage);
- Robust and cost effective improvements to Delta levees to improve flood protection and provide a more reliable water supply delivery system.
- Regional self-reliance/reuse, which reduces reliance on the Delta;
- Restoration and enhancement of the Delta's environmental, cultural, and economic framework.
- Strengthening the existing Delta levees is a more efficient and cost effective way to ensure water reliability for the state and preserve the environmental and economic stability of the Delta. The cost of upgrading the Delta levees to improve water conveyance through the Delta is estimated to be \$2-4 billion, according to work of the Delta Protection Commission. Senate Bill 554 is currently working its way through the State Legislature with broad-based support and would renew the State's financial commitment to Delta levees through the Delta Levee Subventions Program.

DCC Federal Request: *The congressional delegation and federal agencies are encouraged to work to align federal policies and funding opportunities with the State funding sources made available as a result of the passage of Proposition 1. Federal funding to help local agencies better manage and develop new water supplies regionally is critical to a more drought resilient economy, improved water quality and restoring the Delta. Specifically, the DCC urges Congress to pass Water 21 and similar legislation that would create new funding and financing opportunities to support new surface and groundwater storage, water reuse, levee and flood protection improvements, and other water infrastructure and environmental restoration investments.*

3. California's Drought and Federal Drought Legislation

- California's unprecedented fifth year of drought underscores the critical need to sustainably create new water supplies locally and regionally. Proposals such as the Bay Delta Conservation Plan/California Water Fix (BDCP/CA Water Fix) fail to produce new water supplies and instead seek to redistribute California's existing supplies.
- A sound water management strategy must include: conservation; groundwater management and recharge; recycling and reuse; desalination; and investment in a variety of water storage systems. California's Proposition 1 from 2014 includes \$2.7 billion for water storage, but more needs to be done.
- The DCC is supportive of Federal legislative proposals that provide financial assistance to communities impacted by drought, increase water-use efficiency as called for in the U.S. Bureau of Reclamation's WaterSMART program, and provide low interest loans for water infrastructure improvements (i.e., Reclamation Infrastructure Finance and Innovation Act (RIFIA)).
- The DCC cannot support any legislative proposals that erode existing water rights provisions and water quality standards or circumvent environmental protections, thereby further degrading water supply and quality for fish, urban areas, and farmers in the Sacramento-San Joaquin Delta.
- Previous and current drought legislation include provisions that propose to change operations to allow export flexibility when the Delta can least afford it. These changes would harm Delta water quality and the fishery to benefit others and are contrary to the stated purpose of the drought legislation which is, in part, "to facilitate the movement of water...while adhering to all environmental laws."

Specifically S. 2533 proposes to:

- Change the inflow component of the export/inflow ratio from a 14-day average to a 3-day average when flows are increasing is contrary to State law. This would allow exports to increase while key fish species are still in the south and central Delta and before water quality has had a chance to improve [Page 127 beginning at line 9];
- Relax the calculation of Old and Middle River (OMR) requirements during higher flow periods rendering inconsistencies with existing federal biological opinions. Reverse flows can still occur in the south Delta when flows in the Sacramento River and north Delta are high and will increase entrainment and mortality of key fish species at the export pumps. [Page 139 beginning at Line 8]; and
- Requires burden of proof to justify additional exports from the Delta should fall to the SWP and CVP and not impose restrictions on the ability of federal fish agencies to implement the Endangered Species Act. Federal fish biologists have determined that reverse flows need to be less than 5,000 cfs in certain months to avoid adverse impacts

to key fish species. The proposed legislation would make it more difficult to implement these necessary limits on reverse flows. [Page 120 beginning at line 19]

DCC Federal Request: *The DCC must have a role in developing any drought legislation. Recent hearings did not include local Delta interests. It is vital that Delta and Northern California interests be represented in future hearings or debates on drought legislation that impacts California. Furthermore, drought legislation must maximize limited water supplies for all Delta water users not only exporters, provide opportunities for water supply investments that reduce reliance on the Delta and provide communities who rely on the Delta drought resilient water supplies, and ensure that both Delta water users and the environment receive the protections as promised in existing State and Federal statutes.*

4. Invasive Aquatic Weeds in the Sacramento-San Joaquin Delta

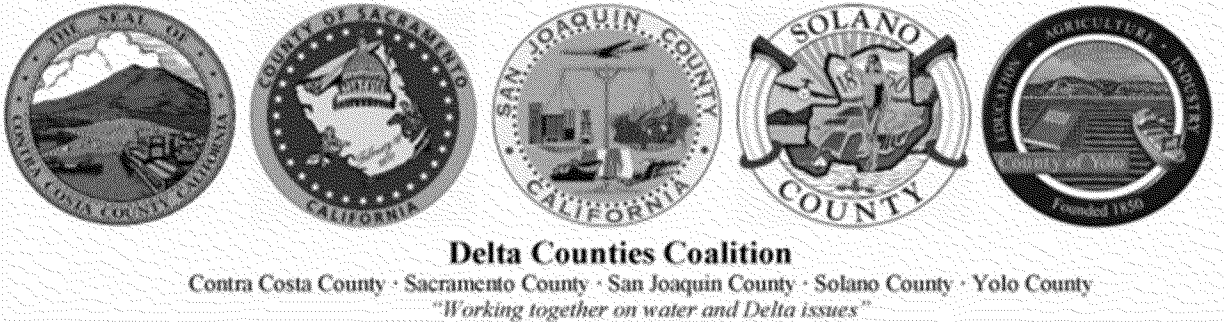
- ☐ **Invasive aquatic weeds, such as submerged Brazilian waterweed, floating water hyacinth, and emergent giant reed are some of the most prolific and damaging invasive plants in the Delta, which threaten our environment and economy.** They choke Delta waterways, obstruct navigation, can completely stifle water diversions, and impede flow causing degradation of water quality and quantity, which impacts irrigation. Aquatic weeds are breeding grounds for mosquitoes, contributing to concerns of the potential for increased incidents of West Nile Virus. The Zika virus epidemic has also heightened the concern over mosquito spread diseases.
- ☐ **Current solutions are ineffective.** Local control measures are limited to mechanical removal of aquatic weeds, which is labor intensive, costly, and only effective in relatively small critical areas. Spraying can be effective, but the size and scope of the problem is too large for the Department of Boating and Waterways to handle given the immediate relief needed from these weeds and the regulatory backlog. Additionally, as large mats of aquatic weeds decay post-spraying, dissolved oxygen in the water column can potentially become depleted, which is harmful for fish.
- ☐ **Beginning in 2014, the U.S. Department of Agriculture spearheaded a comprehensive and sustainable invasive weeds strategy for the Delta.** A coalition of state and local partners formed and was granted funding for a multi-year, area-wide Integrated Pest Management Project for aquatic weeds. The team is implementing integrated, adaptive management of water hyacinth, Brazilian waterweed and arundo using all available tools, including herbicides, mechanical control, and biological control with insects. Satellite-based remote sensing and new knowledge on aquatic weed growth, dispersal, and environmental and economic impacts in the Delta are being used to develop decision support tools to prioritize control sites and select optimal combinations of control methods at each site. Modeling and monitoring of control outcomes, for example the effect of healthy weeds in relation to sprayed weeds on dissolved oxygen, is a critical component of this effort. The team is also examining alternatives to spraying and harvesting, such as using natural enemies to control weeds and exploring ways to restore habitats with beneficial plant species to limit weed reinvasion.

DCC Federal Request: *The DCC thanks the delegation for its continued support in addressing invasive aquatic weeds. The USDA Area-wide Delta Invasive Weeds Program has received funding support of \$1.75 Million for the first two years of the Program beginning in 2014. Additional funding sought in Federal FY 2017 is ~\$1Million. Additional funding for the 5-year study through FY 2019 will be needed.*

5. **National Heritage Area**

- **We support efforts that protect the Sacramento-San Joaquin Delta and grant it status as a special place through the authorization of and funding of a National Heritage Area (NHA).** Senator Feinstein (S 630) and Congressman Garamendi's (HR 1208) proposals include critically important provisions that ensure that our constituents' interests are recognized and protected.
- **We support provisions that require broad stakeholder participation including local governments, special districts, agriculture interests, property owners, and community residents.** Additionally, we support the "opt-out" provision that allows any property owner to withdraw from the participation in the NHA through a simple notification process. This provision makes it clear that this is a voluntary, non-regulatory program.
- **We support the authorization of up to \$10 million over the next 10 years for the Delta NHA.** Resources dedicated to this effort will help achieve the goals of protecting and preserving the Delta as a special place.

DCC Federal Request: *The DCC encourages Congress to move this important measure forward and urges passage in the Senate.*



Specific Comments to S.2533 Federal Drought Legislation

March 16, 2016

There are many features of S.2533 that advance critical projects and programs in the areas of storage and reuse, and are fundamental in preparing for a future with less water due to a changing climate. Development of new water supplies and increasing capture of stormwater and runoff during high flow events are imperative.

However, the Delta Counties Coalition (DCC) continues to be concerned about legislation that would allow the easing of State and federal limits on Delta operations that were designed to protect the Delta ecosystem and fish.

Various drought bills have included provisions that could modify operations to allow export flexibility when the Delta can least afford it. These changes would harm Delta water quality and the fishery to benefit others in the State and are contrary to the stated purpose of S.2533 which is, in part, *"to facilitate the movement of water...while adhering to all environmental laws."*

In the name of water supply, operational change provisions in S. 2533 would modify current State regulations to the detriment of the Delta ecosystem, e.g. State Water Rights Decision 1641 (D-1641). This is inconsistent and may violate the State's 2009 Delta Reform Act and the coequal goals that are also part of federal law (Public Law 112-74).

S.2533 PROPOSED CHANGES TO OPERATIONS

Section 302 – Emergency Operations: *Changing the inflow component of the export/inflow ratio from a 14-day average to a 3-day average when flows are increasing is contrary to State law. [Page 127 beginning at line 9];*

This would allow exports to increase while key fish species are still in the south and central Delta and before water quality has had a chance to improve. Using a 3-day average when flows are increasing would make the calculated inflow larger than under current State regulations (D-1641¹) and allow more water to be exported than allowed under current State regulations.

Using a 14-day average during the period of increasing flows has important ecosystem and water quality benefits. A significant increase in Delta inflow at Sacramento typically

increases flows out of the Delta to Suisun Bay relatively quickly, but it can take a week or more for the effects of those increased flows to move fish and salinity out of the central and south Delta. A 14-day average takes into consideration previous low flows (bad for fish and water quality), and delays significant increases in exports until conditions for fish and water quality in the central and south Delta have improved.

Water Rights Decision 1641 does allow the use of a 3-day average, but only when the State Water Project (SWP) and Central Valley Project (CVP) are making additional releases from upstream storage for export. That typically occurs under low flow conditions when storage releases are also being used to meet Delta standards (*i.e.*, the Delta is “in balance”). For higher flow situations, D-1641 requires 14-day averaging.

Changing these regulations would require a full environmental review of the effects on fish and wildlife, water quality and other Delta beneficial uses and should be done by the State and not federal legislation.

Section 303- Temporary Operational Flexibility to Capture Peak Flows from Winter Storms: Relaxes the calculation of Old and Middle River (OMR) requirements during higher flow periods rendering inconsistencies with existing federal biological opinions. [Page 139 beginning at Line 8]

Reverse flows can still occur in the south Delta when flows in the Sacramento River and north Delta are high, and will increase entrainment and mortality of key fish species at the export pumps. The days that will be excluded from the averaging will likely be days of higher reverse flow so the calculated OMR will be artificially less negative than the actual OMR.

The fish will experience the effects of the actual reverse flows in Old and Middle River and entrainment of key fish species will increase. There is an “unless” clause that refers to avoiding adverse impacts on fish, but this change would unnecessarily tie the hands of the Secretaries of Interior and Commerce.

Section 301- Taking Into Account Increased Real-Time Monitoring and Updated Science: Requiring burden of proof to justify additional exports from the Delta should fall on the SWP and CVP, and should not restrict the ability of federal fish agencies to implement the Endangered Species Act. [Page 120 beginning at line 19]

Federal fish biologists have determined, and specified in the existing biological opinions for Delta operations, that the combined flow in Old and Middle River (OMR) needs to be less than -5,000 cfs in certain months to avoid adverse impacts to key fish species. Reverse flows in the south and central Delta (*i.e.* negative OMR) contribute to increased entrainment and mortality of fish at the export pumps. The proposed legislation would make it more difficult to implement these necessary limits on reverse flows.

Section 301(4)(B) puts the onus on the Secretary of Interior to justify requiring OMR more than -5,000 cfs (*i.e.*, less negative, less reversed). The existing federal biological opinions already require OMR much less than -5,000 cfs in some months. The burden of proof should be on the SWP and CVP to petition the State and federal fish agencies on a case by

case basis for any relaxation of the OMR limits required under State and federal endangered species statutes.

Additionally, the Delta Protection Act of 1959, which was passed to address concerns in the Delta about construction of the State Water Project, prohibits the export of water that is required in the Delta (Water Code sections 12200ⁱⁱ et seq.)

- 12203. It is hereby declared to be the policy of the State that no person, corporation or public or private agency or the State or the United States should divert water from the channels of the Sacramento-San Joaquin Delta to which the users within said Delta are entitled.
- 12204. In determining the availability of water for export from the Sacramento-San Joaquin Delta no water shall be exported which is necessary to meet the requirements of Sections 12202 and 12203 of this chapter.

The State Water Project should not export water that is needed in the Delta to sustain and restore the Delta ecosystem, control salinity in the Delta, and meet the water supply needs of water users within the Delta. The OMR regulations contribute to the protection of fish species in the Delta, and in some months must be more restrictive than -5,000 cfs.

Section 135 – Eligibility for Assistance: Section 135(a)(2) includes as eligible projects a “new water infrastructure facility project, including a water conduit, pipeline, canal, pumping, power, and associated facilities.” [Page 74 beginning on line 7]

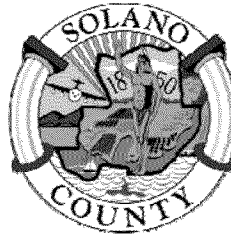
The DCC believes it was not the intent of, and clearly should not be a result of, federal drought legislation to fund the California WaterFix “...a new water infrastructure facility project...” However, this language could be misconstrued to allow federal funding for the California WaterFix Project (previously known as the Bay Delta Conservation Plan). DWR and the U.S. Bureau of Reclamation promised that the CVP and SWP export contractors would fully fund planning, design, construction and operations and maintenance of the proposed new north Delta intakes and twin tunnels. Federal funds should not be used for this purpose.

ⁱ Decision 1641 requires use of a 14-day average for both increasing and decreasing inflows (footnote 19 in D-1641 on page 186).

[19] Percent of Delta inflow diverted is defined in Figure 3. For the calculation of maximum percent Delta inflow diverted, the export rate is a 3-day running average and the Delta inflow is a 14-day running average, except when the CVP or the SWP is making storage withdrawals for export, in which case both the export rate and the Delta inflow are 3-day running averages.

http://baydeltaconservationplan.com/Libraries/Dynamic_Document_Library/Conceptual_Engineering_Report-Through_Delta_Option.sflb.ashx

ⁱⁱ <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=wat&group=12001-13000&file=12200-12205>



Biological opinions issued in 2008 and 2009 govern operation of the State Water Project (SWP) and Central Valley Project (CVP). The opinions require SWP/SVP operations to comply with a detailed set of actions intended to reduce risks to Delta smelt, Chinook salmon, and other protected species. Actions from each opinion most relevant to Yolo and Solano Counties include:

Action I.6.1 (Salmon Opinion). This action requires seasonal floodplain habitat restoration in the Yolo Bypass for juvenile Chinook salmon. The action suggests an “initial performance measure” of 17,000-20,000 acres—one-third of the total acres in the Yolo Bypass—of seasonal floodplain habitat restoration, mostly on active farmland.

Actions I.6.2 through I.7 (Salmon Opinion). These measures call for a diverse suite of actions to improve conditions for Chinook salmon in and near the Yolo Bypass, including the elimination of fish passage impediments at the Fremont Weir, habitat improvements in the vicinity of Liberty Island, and enhancement of the Lower Putah Creek area.

RPA Component 4 (Smelt Opinion). This action calls for restoration of 8,000 acres of tidal and sub-tidal habitat for Delta smelt in the Cache Slough Complex, located in the lower Yolo Bypass area.

Yolo and Solano counties have consistently identified several main areas of concern with related restoration efforts. The leading concerns include the loss of farmland, economic effects, potential effects on the flood protection function of the Yolo Bypass, water quality impacts, impacts on the Yolo Bypass Wildlife Area, and conflicts with existing conservation planning efforts within each county.

Both counties believe these concerns can be addressed through an inclusive, balanced approach to implementing habitat restoration under the Biological Opinions. To this end, the counties are advocating:

An overall objective of achieving a "sustainable balance" between established uses (including agriculture, managed wetlands, water quality/supply and other land uses) and new seasonal or permanent floodplain habitat managed to benefit aquatic species

Robust project governance that includes active, meaningful county participation in project planning, operation, and adaptive management (i.e., changes in project operations over time). Financial support is very important to enabling this participation. Public outreach is also a priority.

Protection of agricultural sustainability through conservation and full economic mitigation for impacts to farmers, local businesses and the economy. This includes mitigation for permanent farmland losses, compensation to growers for yield impacts and increased planting risks, and measures to address impacts to the broader economy.

Federal support for these objectives is critical to the successful implementation of the biological opinion requirements in Yolo and Solano counties.